

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
CHRISTOPHER MASON,**

Plaintiff,

**9:17-cv-1086
(GLS/DJS)**

v.

M. MOORE et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

Christopher Mason
Pro Se
12-A-0162
Cape Vincent Correctional Facility
Rte. 12E
PO Box 739
Cape Vincent, NY 13618

FOR DEFENDANTS:

HON. LETITIA JAMES
New York State Attorney General
The Capitol
Albany, NY 12224

ERIK BOULE PINSONNAULT
Assistant Attorney General

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report-Recommendation and Order (R&R) by Magistrate Judge Daniel J. Stewart duly filed on January 13, 2020. (Dkt. No. 51.) Following fourteen days

from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed,¹ and the court having reviewed the R&R for clear error, it is hereby

ORDERED that the Report-Recommendation and Order (Dkt. No. 51) is **ADOPTED** in its entirety; and it is further

ORDERED that defendants' motion for partial summary judgment² (Dkt. No. 45) is **GRANTED IN PART** and **DENIED IN PART** as follows:

GRANTED as to plaintiff *pro se* Christopher Mason's Eight

Amendment excessive force claim regarding the use of

chemical agents, which claims is **DISMISSED**; and

DENIED as to Mason's Eight Amendment failure to intervene

claim against defendants M. Moore and B. Truax; and it is

further

¹ On January 28, 2020, plaintiff *pro se* Christopher Mason filed a letter indicating that he does not have any objections to the R&R. (Dkt. No. 52.) Instead, he requests a telephone conference to settle this case. (*Id.*) The court refers this request to Judge Stewart for his review and consideration.

² Defendants did not move for summary judgement as to Mason's Eight Amendment excessive force claim other than to the extent that it pertained to the use of chemical agents, and, accordingly, the claim survives to the extent that it pertains to the use of physical force during the cell extraction on October 3, 2014. (Dkt. No. 45, Attach. 1 at 1.)

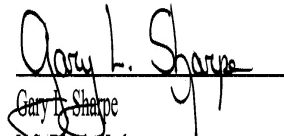
ORDERED that this case is now deemed trial ready and a trial date and deadlines will be set in due course; and it is further

ORDERED that Mason's letter motion (Dkt. No. 52) is **REFERRED** to Magistrate Judge Daniel J. Stewart for his review and consideration; and it is further

ORDERED that the Clerk provide a copy of this Order to the parties in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

February 4, 2020
Albany, New York


Gary L. Sharpe
U.S. District Judge